APPEAL NO. 93403

At a contested case hearing held in (city), Texas, on April 12 and 28, 1993, the hearing officer, (hearing officer), determined that the respondent (claimant) was injured in the course and scope of her employment on November 25, 1992, when a knife she was using to open a can of salsa slipped and pierced her wrist. The appellant (carrier) challenges the sufficiency of the evidence to support the salient findings and conclusions and urges our reversal.

DECISION

Determining that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm. We note that while different inferences might reasonably be drawn from the evidence, such is not a sufficient basis to reverse a decision where there is some probative evidence to sustain it.

Claimant, employed by (employer) as a home care attendant, testified that in November 1992 she was providing home care including the preparation of two meals a day for an elderly woman, (Ms. R), and also that she had a relationship with one of Ms. R's sons, (Mr. R), for over nine years. On November 25, 1992, while preparing a meal for Ms. R at the latter's residence, claimant attempted to pry off, with a knife, the lid of a can of salsa and the knife, held in her left hand, slipped and pierced her right wrist all the way through. Claimant, who is right handed, said she pounded the knife through the can top with the palm of her right hand, then firmly grasped the can with her right hand and used her left hand to attempt to pry the lid off with the knife. She said there was no can opener in the house and that usually Ms. R herself pried the lids off cans with a large kitchen knife and left them opened for claimant's use. She said the wounds did not hurt at the time and that she rinsed them off, applied a salve provided by Ms. R who entered the house after the accident, wrapped her wrist, threw away the knife, and continued to work that day and the next. She prepared a Thanksgiving Day meal for some of her children and grandchildren and did not tell them of the accident not wanting to spoil their holiday. She worked the following Friday and resisted Mr. R's efforts to get her to seek medical care. On the following Monday she stopped by employer's office to pickup up her check and inquired about insurance coverage for an injury at work. While there, she acknowledged she was injured and was taken to a doctor.

Ms. A, a fellow employee, testified she had provided home care for Ms. R in 1987 or 1988, that at that time Ms. R had both an electric can opener (which she did not know how to use) and a manual can opener, that Ms. R did not open cans for the witness, and that she did not know whether there was a can opener in Ms. R's house in November 1992. She also testified that in a phone conversation, Ms. R told her that claimant had said she was stabbed twice when she put up her hand to protect her face from getting stabbed by Mr. R. Claimant denied such occurrence. The carrier introduced color photos of claimant's wrist showing two wounds. There was no evidence, however, as to whether the two wounds were an entry and exit wound or two entry wounds. Ms. C, another coworker, testified she

began to attend to Ms. R in late January 1993, that she saw no electric can opener but did use a manual can opener at Ms. R's house, that Ms. R told her claimant wanted her to say that the accident happened at her house but that such was a lie, that Ms. R was nervous and ill and wanted to tell the truth, but became ill and lapsed into a coma before the hearing. Carrier also introduced a signed statement from EH that Ms. R told her that claimant's injury happened in a fight at claimant's house and not while working for Ms. R.

The carrier argued at the hearing that the resolution of this case turned on the credibility of the claimant. The hearing officer obviously believed the claimant's version of how her unwitnessed injury was sustained. On appeal, the carrier argues that the hearing officer's findings and conclusions resulting in her determination are against the great weight and preponderance of the evidence and expresses utter incredulity that the hearing officer decided to believe the claimant under the circumstances of the case. Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Thomas A. Knapp
Appeals Judge